

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
BRIAN S. MILLER, JUDGE

DIVISION II

CACR06-359

April 4, 2007

TANIA LEEANN NESLER
APPELLANT

v.

STATE OF ARKANSAS
APPELLEE

AN APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[CR-2005-122]

HONORABLE LANCE HANSHAW,
JUDGE

AFFIRMED

A Lonoke County jury found appellant Tania Nesler guilty of manufacturing methamphetamine, possession of drug paraphernalia with intent to manufacture, possession of a controlled substance, and possession of drug paraphernalia. She was sentenced to serve twenty-five years in the Arkansas Department of Correction. On appeal, she argues that the trial court erred when it denied her motion to suppress the evidence against her. We affirm.

On February 28, 2005, Joseph Klimas walked into the Lonoke County Sheriff's Department and voluntarily stated in writing that he observed Nesler manufacturing methamphetamine in her home and in her business, which was attached to her home. Based on Klimas's written statement, Detective Jim Kulesa prepared an affidavit for search warrant. Kulesa's affidavit details the drugs and drug paraphernalia in the home and the rooms where

those items were located. Detective Kulesa's affidavit did not identify Klimas and failed to provide a specific statement as to the reliability of the information provided by Klimas.

The judge issued a search warrant based upon Detective Kulesa's affidavit, and the warrant was executed on Nesler's home. During the search, components and paraphernalia used in the manufacture of methamphetamine were found, and Nesler made several incriminating statements.

On March 11, 2005, the State charged Nesler with manufacturing methamphetamine, possession of drug paraphernalia with intent to manufacture, possession of a controlled substance, and possession of drug paraphernalia. Nesler moved to suppress the evidence against her, arguing there was no probable cause to support the issuance of a search warrant. She specifically argued that the affidavit in support of the search warrant failed to identify the informant providing the information and that the affidavit did not contain sufficient indicia of the credibility or reliability of the informant.

At the suppression hearing, Detective Kulesa testified that he first met Klimas on February 28, 2005, when he voluntarily showed up to give a statement. He explained that Klimas was not under investigation. Detective Kulesa stated that Klimas had been residing in Nesler's home until February 26, 2005, and that Klimas stated in writing that Nesler was manufacturing methamphetamine. He testified that Klimas stated he had overheard the home's occupants saying they were going to cook another batch that day. Detective Kulesa said that he ran a background check on Klimas and learned that Klimas was arrested by the

North Little Rock Police Department on January 22, 2005. This information, however, was not provided to the judge when Detective Kulesa applied for the search warrant. He said that he only informed the judge that a “corroborating individual” had given him a statement.

The trial court held that, when viewed as a whole, the affidavit and testimony provided a substantial basis to believe that items subject to seizure would be found at Nesler’s home and business. Nesler’s motion to suppress was denied and she now appeals.

In reviewing the denial of a motion to suppress evidence, we conduct a de novo review based on the totality of the circumstances. *See Coggin v. State*, 356 Ark. 424, 156 S.W.3d 712 (2004). In doing so, we review findings of historical facts for clear error and determine whether those facts give rise to reasonable suspicion or probable cause. *Id.* We give due weight to inferences drawn by the trial court. *Id.* We reverse only if the denial of a motion to suppress is clearly against the preponderance of the evidence. *See Davis v. State*, 367 Ark. 330, ___ S.W.3d ___(2006).

Rule 13.1(b) of the Arkansas Rules of Criminal Procedure provides in pertinent part:

If an affidavit or testimony is based in whole or in part on hearsay, the affiant or witness shall set forth particular facts bearing on the informant’s reliability and shall disclose, as far as practicable, the means by which the information was obtained. An affidavit or testimony is sufficient if it describes circumstances establishing reasonable cause to believe that things subject to seizure will be found in a particular place. Failure of the affidavit or testimony to establish the veracity and bases of knowledge of persons providing information to the affiant shall not require that the application be denied, if the affidavit or testimony viewed as a whole, provides a substantial basis for a finding of reasonable cause to believe that things subject to seizure will be found in a particular place.

Reasonable cause exists when the facts and circumstances within the officer's knowledge, or of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that an offense has been or is being committed. *Bond v. State*, 45 Ark. App. 177, 873 S.W.2d 569 (1994); *Vega v. State*, 26 Ark. App. 172, 762 S.W.2d 1 (1988). "Reasonable cause to believe" has been defined as a basis for belief in the existence of facts which, in view of the circumstances under and purposes for which the standard is applied, is substantial, objective, and sufficient to satisfy applicable constitutional requirements. Ark. R. Crim. P. 10.1(h); see *McCormick v. State*, 74 Ark. App. 349, 48 S.W.3d 549 (2001); *Brannon v. State*, 26 Ark. App. 149, 761 S.W.2d 947 (1988).

When the question is one of reasonable cause in support of the issuance of a search warrant, an affidavit for search warrant need not contain facts establishing the veracity and reliability of non-confidential informants. See *Stanton v. State*, 344 Ark. 589, 42 S.W.3d 474 (2001); *Moore v. State*, 323 Ark. 529, 915 S.W.2d 284 (1996); *Simmons v. State*, 278 Ark. 305, 645 S.W.2d 680 (1983). In deciding whether to issue a warrant, the magistrate should make a practical, common-sense determination based on the totality of the circumstances set forth in the affidavit. *Stanton v. State*, 344 Ark. 589, 42 S.W.3d 474 (2001).

Here, Klimas was not a confidential informant. He was a citizen informant because his identity was not a secret. His identity was revealed in open court at the suppression hearing, and his written statement was made available to Nesler at the hearing. Therefore,

Detective Kulesa's affidavit in support of the search warrant did not need to set forth facts establishing Klimas's veracity and reliability.

Moreover, we would affirm the trial court even if we held that Detective Kulesa's affidavit was deficient. When an officer relies in good faith on a search warrant that is later determined to be unsupported by probable cause, any evidence discovered by reason of that search will not be suppressed. *Crain v. State*, 78 Ark. App. 153, 79 S.W.3d 406 (2002). When assessing good faith, we can and must look to the totality of the circumstances, including what the affiant knew, but did not include in his affidavit. *Hampton v. State*, 90 Ark. App. 174, 195 S.W.3d 370 (2005). The test for determining whether the good-faith exception applies is whether it was objectively reasonable for a well-trained police officer to conclude that the search was supported by probable cause. *Id.*

Although he failed to inform the judge that Klimas was a citizen informant, Detective Kulesa was aware that Klimas had come into the station on his own and implicated Nesler. It was therefore objectively reasonable for a well-trained police officer to conclude that the search was supported by reasonable cause.

Affirmed.

PITTMAN, C.J., and MARSHALL, J., agree.